

**HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CARNEGIE INSTITUTION OF WASHINGTON,  
M7D CORPORATION,

Plaintiffs,

v.

FENIX DIAMONDS LLC,

Defendant.

Case No. 1:20-CV-00200-JSR

**EXPERT REPORT OF JOHN C. JAROSZ**

September 18, 2020

**HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	2
A.	Assignment .....	2
B.	Qualifications .....	2
C.	Evidence Considered .....	3
D.	Compensation .....	3
E.	Summary of Opinions .....	4
II.	Background .....	4
A.	Parties at Issue .....	4
	1. Carnegie .....	4
	2. M7D / WD .....	5
	3. Fenix .....	6
B.	The Patent at Issue .....	7
C.	Marketplace Overview .....	8
D.	Technology Overview .....	12
E.	Industry Demand Drivers .....	12
	1. The “4 C’s” .....	12
	2. Other Factors .....	15
F.	Importance of the ’078 Patent .....	17
III.	DAMAGES ANALYSIS .....	20
A.	Framework .....	20
B.	Reasonable Royalty Overview .....	21
C.	Hypothetical Negotiation Construct .....	24
	1. Overview .....	24
	2. Date of the Hypothetical Negotiation .....	27
	3. Parties to the Negotiation .....	27
D.	Reasonable Royalty Analysis .....	27
	1. Form of Royalty .....	28
	2. Royalty Base .....	32
	3. Royalty Rate .....	39
	4. Reasonable Royalty Damages .....	73
E.	Prejudgment Interest .....	73
IV.	CONCLUSION .....	74

**HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

**I. INTRODUCTION**

**A. Assignment**

1. I, John C. Jarosz, submit this expert report on behalf of the Carnegie Institution of Washington (“Carnegie”) and M7D Corporation (“M7D”), also known as WD Lab Grown Diamonds (“WD”),<sup>1</sup> (collectively, “Plaintiffs”) in the above-captioned case. I have been asked by Counsel for Plaintiffs to provide expert analysis and testimony, if necessary, related to the damages that may be owed by Fenix Diamonds LLC (“Fenix” or “Defendant”) as a result of the alleged infringement of U.S. Patent No. 6,858,078 (“the ’078 Patent” or the “patent at issue”).<sup>2</sup>

2. For the purposes of this report, I have assumed that the patent at issue will be found valid, enforceable, and infringed. This report is based on the information that was available to me as of the date of this report and summarizes the opinions that I have formed to date. I may revise, supplement, or expand my opinions, if necessary and allowed, based on further review and analysis of information and opinions provided to me before trial.

**B. Qualifications**

3. I am a Managing Principal of Analysis Group, Inc. (“AG”) and Director of the firm’s Washington, D.C. office. AG is an economic, financial, healthcare, and strategy consulting firm with offices in Beijing, China; Boston, MA; Brussels, Belgium; Chicago, IL; Dallas, TX; Denver, CO; London, United Kingdom; Los Angeles, Menlo Park, and San Francisco, CA;

---

<sup>1</sup> M7D operates under the public-facing name of WD Lab Grown Diamonds. *See* Deposition of Susanne Rechner, August 27, 2020 (“Rechner Deposition”), at p. 12. At some time since 2017, WD Lab Grown Diamonds changed its name from Washington Diamonds LP to WD Lab Grown Diamonds. *See* Amended Complaint, *Carnegie Institution of Washington, M7D Corporation, v. Fenix Diamonds*, United States District Court Southern District of New York, 1:20-cv-00200-JSR, March 5, 2020 (“Complaint”), ¶ 7. Throughout my reports, I refer to both WD Lab Grown Diamonds and Washington Diamonds LP as “WD.”

<sup>2</sup> Complaint. I understand that U.S. Patent No. RE41,189 is no longer at issue here.

**HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

of the patent at issue, and a *Georgia-Pacific* analysis. [REDACTED]

[REDACTED]

201. This report is based on the information that was available to me as of the date of this report and summarizes the opinions that I have formed to date. I may revise, supplement, or expand my opinions, if necessary and allowed, based on further review and analysis of information and opinions provided to me before trial.

  
\_\_\_\_\_  
John C. Jarosz